

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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| CAPPSEALS, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | C. A. No. 05-11907-JLT |
| DIRECT MARKETING CONCEPTS, |) | |
| INC., ITV DIRECT, INC., DIRECT |) | |
| FULFILLMENT, LLC, DONALD |) | |
| BARRETT, AND ROBERT MAIHOS, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

CAPPSEALS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56, plaintiff Cappseals, Inc. (“Cappseals”) moves for partial summary judgment on its claims against the defendants Direct Marketing Concepts, Inc. (“DMC”). Specifically, Cappseals requests that the Court declare pursuant to Count IV of its Complaint that DMC is a co-obligor of the same debt that resulted in the judgment that this Court issued against ITV Direct, Inc. (“ITV” or the “Judgment Debtor”) on August 3, 2005 (the “Judgment”) in a related proceeding, *ITV Direct, Inc. v. Healthy Solutions, LLC et al*, C.A. No. 04-CV10421-JLT (the “Related Action”). In the alternative, Cappseals moves this Court to declare under Count V of its Complaint that DMC and the ITV are alter egos, and DMC is therefore equally liable to satisfy the Judgment.

In the Related Action, this Court ruled that a purchase order issued by ITV gave rise to Cappseals’ right to payment on the goods shipped to and accepted by the defendants. DMC issued an identical purchase order requesting the exact same goods that were eventually manufactured and shipped by Cappseals. The plain language of the purchase order, and DMC’s

actions subsequent to its issuance of the purchase order, show that DMC was a party to the contract recognized by the Court and is equally liable for the payment obligation memorialized by the Judgment.

Cappseals brings this action, and this Motion, solely because from what little post judgment discovery it has been able to conduct in the Related Action, it is clear that ITV drained its bank accounts and ceased operations concurrently with this Court's summary judgment decision issued on July 20, 2005. At the same time, discovery in the Related Action has revealed that any distinction between DMC and ITV is a fiction created by the entities' sole shareholders, Donald Barrett and Robert Maihos, who have manipulated ITV and DMC in an obvious effort to avoid liability for the Judgment. Accordingly, Cappseals has initiated this action to overcome the defendants' shell game and recover the defendants' debt from DMC – another owner of the debt and the alter ego of the Judgment Debtor. This Motion seeks to expedite that process because liability is so clear.

As discussed in more detail within its Memorandum of Law submitted herewith, Cappseals is entitled to judgment as a matter of law against DMC. In addition to Cappseals' Memorandum of Law, Cappseals has also submitted herewith a Concise Statement of Material Facts, and, the Affidavit of Scott A. Silverman in further support of its motion.

WHEREFORE, this Court should grant Cappseals' request for partial summary judgment by issuing a Declaratory Judgment pursuant to Count IV of its Complaint that DMC is liable for the purchase order debt, and, declare under Count V of the Complaint that DMC is the alter ego of ITV.

CAPPSEALS, INC.
By its attorneys,

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November 10, 2005

LOCAL RULE 7.1 CERTIFICATION

I, Scott A. Silverman, counsel for moving party Cappseals, Inc., hereby certify that I have conferred with opposing counsel in a good faith attempt to resolve or narrow the issues raised in this motion, but have been unable to do so.

/s/ Scott A. Silverman
Scott A. Silverman

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing *Motion for Summary Judgment* was served on the foregoing attorneys of record pursuant to Fed. R. Civ. P. 5 as follows:

Via electronic notification:

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DATED: November 10, 2005